IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1891 OF 2005

Mr.Somu Naidu & Anr. ..Petitioners

Vs.

State of Maharashtra & Ors ..Respondents

...

Mr. R.M.Kedia Advocate for Petitioners
Mr. Y.S.Shinde,A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : AUGUST 17,2005

P.C.

1. Heard the learned advocate for the petitioners and the learned A.P.P. for the State.

2. The petitioners are seeking quashing of complaint i.e. C.C.No.439/S/2005 pending before the learned Metropolitan Magistrate Court No.12, Bandra(E) Mumbai. In the said case, process has been issued against the petitioners under Section 138 r.w. 142 of Negotiable Instruments Act. The

learned advocate for the petitioners submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set aside. If the process issued against the petitioners is set aside, the proceedings in respect of the petitioners would come to an end.

3. However, for the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, I am of the opinion that the petitioners have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioners prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioners to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the petitioners states that as the mother of the petitioners is seriously ill, the petitioner no.1 has gone to Chenai and the said revision will be

filed within five weeks. Liberty is granted to prefer necessary revision within five weeks. In view of the above statement that the revision will be filed within five weeks, the trial Court shall not proceed with the trial for a period of five weeks from today.

5. On the necessary revision being preferred by the petitioners before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

6. The learned advocate for the petitioners further states that NBWs came to be issued against the petitioners. It is prayed that the said NBWs be quashed. I am not inclined to quash NBWs as in my opinion, it would be appropriate that the petitioners prefer application before the trial Court for setting aside the said NBWs.

7. Liberty is granted to the petitioners to prefer the necessary application before the learned Magistrate. The learned advocate for the

petitioners states that the necessary application will be preferred within five weeks from today. In order to enable the petitioners to take necessary steps for setting aside NBWs, the said NBWs are stayed for a period of five weeks from today.

8. Writ Petition is disposed of.

[V.K.TAHILRAMANI,J.]